of the Red Cross should be avoided except where supplementation is essential to meet the anticipated needs of the community.

Very truly yours,

(Signed) GEORGE BAEHR, M. D.,
Chief Medical Officer.

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(COPY)

The Director of the Office of Civilian Defense and the Chairman of the American National Red Cross recently issued the following joint statement to clarify the responsibilities of the two agencies in civilian defense activities.

1. The Office of Civilian Defense is the official Government agency "to assure effective coördination of federal relations with state and local governments engaged in defense activities, to provide for necessary coöperation with state and local government in respect to measures for adequate protection of the civilian population in emergency periods, to facilitate constructive civilian participation in the defense program, and to sustain national morale." (See "Local Organization for Civilian Protection," issued by the U. S. Office of Civilian Defense, July 17, 1941.)

2. The American National Red Cross is the responsible agency for relief of suffering caused by disaster, both in peacetime and in the national defense emergency, by providing food, clothing, shelter, medical and nursing care, and other basic necessities. Therefore, Red Cross Disaster Relief Service, nationally and in local chapters, will serve in emergency care and rehabilitation of individuals and families suffering from disaster caused by belligerent action during the national defense emergency in coöperation with governmental agencies—national, state, and local. In rescue work and emergency medical service caused by belligerent action by which the Office of Civilian Defense assumes leadership and responsibility, the Red Cross will make its services available as needed. (See "Disaster Preparedness and Relief—Manual for Chapters," ARC 209, issued by the American Red Cross.)

3. The Red Cross "acts as a medium of communication between the people of the United States of America and their Army and Navy." Cases of active service and ex-service men and their families should be referred to the Red Cross, which is responsible for providing or securing the service and assistance needed. In carrying out these services the Red Cross makes maximum use of other community resources.

4. Training of Office of Civilian Defense workers in first aid and nurse's aide service is provided by the Red Cross through its programs of training in first aid and nurse's aide courses. The recognized service of the Red Cross in training industrial workers and others in first aid is drawn upon.

5. The Red Cross, through its chairman as a member of the Civilian Protection Board, has made available all of its services as needed by the Office of Civilian Defense, both national and local.

6. Councils of Defense and Red Cross Chapters in their civilian defense activities should develop their local plans of coöperation in accord with this joint statement of responsibility.

(Signed) F. H. LAGUARDIA,
U. S. Director, Civilian Defense.
NORMAN H. DAVIS,
Chairman, American National Red Cross.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

Releases: Effect of Release Given by Injured Employee to Employer and Insurance Carrier; Release Does Not Preclude Malpractice Action

It is a general rule of law that a release given by an injured person to one of several persons jointly causing his injury has the effect of releasing all persons. Usually the rule is stated as follows: "The release of one joint tort feasor releases all." As so-called malpractice actions are tort actions, it follows that where more than one person is claimed to have caused injury to a patient, a release given to one releases all. (For a more detailed discussion, see CALIFORNIA AND WESTERN MEDICINE, August, 1938, p. 171.)

The following is a hypothetical case illustrating the foregoing rule: Mr. X undergoes a major operation at the White Hospital (not a charitable hospital); surgery is performed by Dr. A, who is assisted by several nurses employed by the hospital. One nurse neglects properly to count the sponges, resulting in a sponge being left in the patient's body. Assuming negligence, the persons liable would be Dr. A, as the surgeon, the nurse, and the White Hospital. If the patient, Mr. X, should sign a written release releasing the nurse, such release would also have the effect of releasing both the physician and the hospital.

A far different situation is present in those instances in which negligence is involved in the treatment of an employee injured during the course of his employment. An injured employee has, of course, a right to claim compensation under the Workmen's Compensation Act against his employer and his employer's insurance carrier. Under the Compensation Act, if the original injury is aggravated because of medical treatment furnished at the expense of the employer or his insurance carrier, the injured employee may claim additional compensation for such aggravated injury.

Assuming that an injured employee is negligently treated by a physician selected by his employer's insurance carrier, and assuming that such treatment aggravates the original injury, then the question arises: If the injured employee releases his employer and insurance carrier from liability under the Workmen's Compensation Act, does such release also operate as a release of the physician?

In *Smith* vs. *Coleman,* 46 A. C. A. 560, decided August 15, 1941, the foregoing question was answered in the negative. In that case the defendant physician had treated a fractured little finger which had been injured during the course of plaintiff's employment. The plaintiff had claimed compensation before the Industrial Accident Commission and had settled his claim, giving his employer and employer's insurance carrier a written release. He then commenced a malpractice action against the physician, alleging negligent treatment of the fractured finger. The physician claimed that the release given to the employer and insurance company operated as a release of any claim for malpractice as against him. The District Court of Appeal rejected this contention and stated:

> The present action is not a claim under the Workmen's Compensation and Safety laws. The release was effective only as to plaintiff's employer and the insurance carrier, and did not bar his action against defendant for the separate and subsequent injury which was caused by defendant's malpractice.

The decision of the Court was based upon the fact that the physician and the employer and insurance carrier were not *joint* tort feasors. The employer and insurance carrier were not in any manner liable in tort for the act of the physician. Their liability was one for compensation under the Workmen's Compensation Act, which is a special liability not dependent upon negligence or wrong. Accordingly, the release of the employer and insurance carrier was not a release of a liability for tort and, hence, could not inure to the benefit of the physician, whose liability, if any, was necessarily a tort liability.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.